

ANALYSIS OF THE AUDITED COMPLAINTS

CHAPTER 11

AUDIT CRITERIA

In an effort to maximize the availability of data captured in the complaint database, the IPA developed a checklist for gathering data and a process for evaluating the quality of the investigations. This process allows for consistency between auditors and provides a database that can be manipulated and randomly searched for critical trends and patterns. By developing a process that can audit and capture varied trends and patterns, the database is designed to highlight the critical elements, actions and aspects of an investigation. Consistency in capturing data is important, a significant aspect of the database is that it was designed to capture the nature of the complaint by using different auditing criteria for the different complaint classifications: Formal, Procedural, No Boland, Informal, Policy and Inquiry. Although each and every complaint is important, this report

only provides a synopsis of the Formal complaint process.

FORMAL COMPLAINTS

Formal complaints allege a serious violation of the law by SJPd officers. SJPd also uses the Formal complaint process to address serious violations of a department policy, procedure, rules or regulations by its officers. From January 1 through December 31, 1999, there were 118 Formal cases audited by the IPA. Of the 118 Formal complaints, 46 resulted from a call for service, 33 were self initiated, 28 were traffic related and 11 were classified as other.

It is important to understand that the 118 Formal cases represent the number of investigations completed in 1999. This total may differ slightly from the total number filed throughout 1999, because some cases may have been filed in 1998 and completed in 1999, while others that were filed in 1999

may still be active well into the year 2000.

Was review requested by the complainant?

Of the total number of complaints listed above, 57 complainants or 48% requested the IPA to review the case. Although most of the requests were made after the case had been closed by PSCU, a small percentage of the requests for review were made while the investigation was still active.

Was the review requested by the complainant?

Yes	57	48%
No	61	52%

Did the IPA request**further action from PSCU?**

The IPA requested further action from the PSCU in 11 or 9% of the Formal cases it reviewed. Requests varied from reopening an investigation to providing the IPA with additional information or documentation. Although the number of complaints varies from year to year, this year marked a significant decrease in the number of further action requests by the IPA. As a comparison, during the 1998 calendar year, the IPA made 27 requests, or 11% of the Formal cases audited.

Did the IPA request further action from the PSCU?

Yes	11	9%
No	107	91%

Did the Auditor attend officer**interviews conducted by the****PSCU after being notified?**

Formal complaints are the only type of complaint that has a process that is mandated by law (AB 301) for questioning and interviewing SJPd officers, pursuant to the investigation of a complaint. At this time, the Independent Police Auditor is the only member of the IPA that attends officer interviews. Because of this constraint, the Auditor must consider factors such as seriousness of the allegations, status of the officer being interviewed (subject or witness officer) and time constraints as to the Auditor's availability before making a decision to attend. During this calendar year, of the 118 Formal cases, the IPA requested to be notified of police officer interviews in 39 or 33% of the cases.

Of those, the IPA was notified of 35 interviews, with the Auditor attending 21 interviews where notification was received. The PSCU failed to provide notice to the Auditor on four (4)

cases. This is a marked improvement from the prior year.

Recommendation: It appears that some of the notification problems in the past have been attributed to the frequent turnover of investigators at PSCU. In an effort to negate this concern, strong emphasis must be placed on providing investigators with on-going training that addresses the importance of maintaining a case file that chronicles how notices of upcoming interviews were given to the IPA. Proof of notice can be documented by saving a copy of the fax notice, e-mail print out or a notation can be made in the case file, with the date and time, if a phone call was used to make the notification. Recently, the PSCU commander implemented a form to document

Did the Auditor attend officer interviews conducted by the PSCU after being notified?

Notification requested	39	33%
Notice received	35	90%
Interviews attended	21	54%
Interviews not attended	5	13%
Interview plans changed	13	33%

and track officer interview notification.

As previously mentioned, currently the Independent Police Auditor is the only IPA representative that attends officer interviews. With the addition of an experienced Assistant Auditor, plans are underway to have the Assistant Auditor attend officer interviews in the near future.

Did the IPA agree with the finding of the complaint?

This section reflects the number of times the IPA agreed or disagreed with the resolution of the complaint. The IPA disagreed with the finding of the investigation in 6 or 5% of the 118 Formal cases even after further action was requested from the PSCU. In 1998, the IPA disagreed with 45 or 14% of the Formal cases.

Even though the IPA may disagree with a case resolution for a number of reasons, in most cases where there is a disagreement, weight given to the credibility of the complainant and/or

witnesses appears to have been the difference. It appears that in some cases the IPA arrived at a different conclusion based solely on the unbiased acceptance of the credibility of the information being provided by the complainant or witness.

Another reason that disagreements have occurred in the past is because cases have been sent for investigation to a unit other than PSCU. In these cases, the reason for the disagreement was because an important aspect of the investigation was omitted or the thoroughness of the investigation was in question.

Did the IPA agree with the finding of the complaint?

Yes - Agree	112	95%
No - Disagree	6	5%

DISAGREED CASES BY IPA

Case #1– Complainant alleged he was kicked in the chest and hit in the head, possibly with the butt end of a gun. The findings by SJPd Exonerated the officer. The IPA disagreed.

Case #2 – Complainant alleged he was unlawfully arrested and discriminated against during an investigation into a domestic violence matter. The findings by SJPd Exonerated one of the allegations and Unfounded four others. The IPA disagreed.

Case #3 – Complainant alleged he was pushed and forced into his vehicle by an officer, causing an injury to his knee and back. The finding by SJPd Unfounded the allegation because the Complainant was uncooperative and refused to release medical information relevant to the case. The IPA disagreed with the Unfounded finding.

Case #4 – Complainants alleged that unnecessary force was used during their arrest. The finding by

SJPD Unfounded the allegations because the investigator felt the complainants stories were contradictory. The IPA disagreed with the finding.

Case #5 – Complainant alleges that during an arrest, the arresting officer made discriminatory and racial comments about the complainant. The finding by SJPD Unfounded the allegation. The IPA disagreed.

Case #6 – Complainant alleges he was stopped for a minor vehicle code violation and physically forced out of his vehicle when the officer noticed an object (tool) on the floorboard. The finding by SJPD Exonerated the allegation because the officer feared for his safety. The IPA disagreed.

Did the incident give rise to criminal action against the complainant?

75% of the complainants who filed a complaint against a police officer were also arrested for a crime. However, in some cases where a complainant was ar-

rested, the District Attorney declined to issue a criminal complaint. The 25% figure involves complainants who filed a complaint, but were not accused of violating a law.

Did the incident give rise to criminal action against the complainant?

Yes	88	75%
No	30	25%

Was the complaint properly classified?

Yes	40	93%
No	3	7%

Was the procedure properly applied?

Yes	42	98%
No	1	2%

PROCEDURAL COMPLAINTS

Procedural complaints are those that despite the allegation of misconduct, no factual basis supports the allegation because the subject officer's conduct was within procedure. There were 43 Procedural complaints reviewed in 1999.

Was the complaint properly classified?

Of the 43 Procedural complaints reviewed, the IPA found three case that it felt were classified incorrectly. In the opinion of the IPA, the three cases should have been classified as Formal cases because the allegations made by each complainant appears to have warranted an investigation that included officer and witness interviews.

Was the procedure properly applied?

The IPA found that in one Procedural case, the subject officer(s) did not follow a proper procedure. Procedures are generally outlined in a Department General Order Manual, and are usually devel-

oped using training standards that are recognized by Police Officers Standards and Training (POST) or taught by the department as an acceptable practice or procedure. Procedural cases may only be classified as such if the officer(s) followed a correct and acceptable procedure, otherwise the complaint should be investigated as a Formal complaint.

Case #1– The complainant was arrested subsequent to an arrest warrant. Officers from a specialized unit responded to the complainant's residence and forced entry into the home, breaking through a door and entering with weapons drawn. In review of the case it was determined that the arrest warrant was issued for a non-violent offence and the complainant posed no threat of violence. It was determined that the use of force went beyond what would be considered appropriate for a warrant service with a minimal threat level. The procedure manual was changed to address the response to an arrest warrant,

with the development of criteria for consideration.

Did the IPA request further action from the PSCU?

Requests may vary from reopening an investigation to providing the IPA with additional information or documentation. The IPA requested further action from the PSCU in two Procedural cases that were reviewed.

Did the IPA request further action from the PSCU?

Yes	2	5%
No	41	95%

What is the IPA's finding of the investigation?

The IPA disagreed with the finding of the investigation in 1 of the 43 Procedural cases even after further action was requested from PSCU.

What is the IPA's finding of the investigation?

Yes - Agree	42	98%
No - Disagree	1	2%

SPECIAL AUDIT OF UNNECESSARY FORCE CLASS I CASES

What follows is a special audit to determine how well the new procedure is being implemented. In 1999, the IPA audited a total of 77 cases where excessive use of force was investigated. Of the 77 cases, 8 or 10% had major injuries and were classified as a Class I case. Major injuries involve lacerations, fractures or permanent injury.

ing to the scene where force was used and making sure that when necessary, evidence is collected and witnesses interviewed. The compliance rate for supervisor intervention is currently outstanding. Supervisors should be commended and encourage to continue their efforts.

What was the degree of injury?

A minor injury refers to an injury such as scratches and bruises. Moderate injuries are those that involve cuts or large scrapes. In 1999, most of the injuries were either minor or moderate. Minor injuries were reported 52% or on 40 cases and Moderate injuries were reported 9% or on 7 cases.

Special Audit Summary:

As reported in Chapter 4, "On Scene Investigations Following Use of Force." The department has been experiencing a marked increase in supervisors respond-